

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DEMETRIUS BAILEY,)	
)	
Petitioner,)	Civil Action No. 08-1115
)	
v.)	Judge McVerry
)	Magistrate Judge Bissoon
LOUIS FOLINO, <i>et al.</i> ,)	
)	
Respondents.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is recommended that the Petition for Writ of Habeas Corpus filed by Demetrius Bailey be dismissed *sua sponte* because it fails to assert a claim cognizable under 28 U.S.C. §2254. It is further recommended that a certificate of appealability be denied.

II. REPORT

Demetrius Bailey is a state prisoner who has filed this federal habeas petition pursuant to the provisions of 28 U.S.C. § 2254. Bailey asserts that he has been confined to the Restricted Housing Unit at the State Correctional Institution at Greene (“SCI Greene”) without due process of law. He seeks an order directing that he be released to the general population at SCI Greene.

It is well settled that relief requested through a writ of habeas corpus is limited. See e.g., Leamer v. Fauver, 288 F.3d 532, 540 (3d Cir.2002). “[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). On the other hand, a Section 1983 civil rights action is the proper remedy for a prisoner who is seeking redress for a purported constitutional violation related to prison conditions. Preiser, 411 U.S. at 499. The Court of Appeals for the Third Circuit has explained that:

whenever the challenge ultimately attacks the “core of habeas” -- the validity of the continued conviction or the fact or length of the sentence – a challenge, however denominated and regardless of the relief sought, must be brought by way of a habeas corpus petition. Conversely, when the challenge is to a condition of confinement such that a finding in plaintiff's favor would not alter his sentence or undo his conviction, an action under §1983 is appropriate.

Leamer, 288 F.3d at 542.

Here, a ruling in Bailey’s favor would not change either the fact or duration of his conviction or sentence. Instead, Bailey’s challenge is related to the conditions of his confinement, and his remedy lies in a civil rights suit under 42 U.S.C. § 1983. Clearly, “no matter what the outcome of [Bailey's] habeas petition, neither the fact nor the length of his incarceration will be affected.” Bronson v. Demming, 56 Fed. Appx. 551, 553-54 (3d Cir.2002). Consequently, relief is unavailable to Bailey and his federal habeas petition should be dismissed for failing to raise a claim cognizable under 28 U.S.C. §2254.¹

Finally, a certificate of appealability should be denied because jurists of reason would not find it debatable whether Bailey has stated a cognizable federal habeas claim. See e.g. Slack v. McDaniel, 529 U.S. 473 (2000)(explaining standard for grant of a certificate of appealability where court does not address petition on the merits but on some procedural basis).

III. CONCLUSION

For the reasons discussed above, it is recommended that the Petition for Writ of Habeas Corpus filed by Demetrius Bailey be dismissed, and that a certificate of appealability be denied.

1. There is some precedent in the Third Circuit for allowing a federal prisoner to challenge the conditions of his confinement under the habeas corpus statutes. See Woodall v. Fed. Bureau of Prisons, 432, F.3d 235 (3d Cir.2006). That precedent, however, applies only to federal prisoners. See Coady v. Vaughn, 251 F.3d 480, 485-86 (3d Cir.2001).

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) & (C) and Local Rule 72.1.4 B, objections to this Report and Recommendation are due by October 3, 2008. Failure to timely file objections may constitute a waiver of any appellate rights.

September 16, 2008

s/ Cathy Bissoon
CATHY BISSOON
UNITED STATES MAGISTRATE JUDGE

cc:

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